

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING MAP AMENDMENT REPORT (#FZC-21-24)**  
**BAE DEVELOPMENT LLC**  
**JANUARY 24, 2022**

**I. GENERAL INFORMATION**

**A. Project Description**

This is a report to the Flathead County Planning Board and Board of Commissioners regarding a request by BAE Development LLC, with technical assistance from Sands Surveying, Inc., for a zoning map amendment in the Blanchard Lake Zoning District. The proposed amendment, if approved, would change the zoning of the subject property from 'AG-20 Agricultural' to 'SAG-5 Suburban Agricultural'.

**B. Application Personnel**

**1. Owner/Applicant**

BAE Development LLC  
1885 Sophie Lake Road  
Eureka, MT 59917

**2. Technical Representative**

Sands Surveying, Inc.  
2 Village Loop  
Kalispell, MT 59901

**C. Process Overview**

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11<sup>th</sup> Street West in Kalispell.

**1. Land Use Advisory Committee/Council**

This property is not located within the jurisdiction of a Land Use Advisory Committee.

**2. Planning Board**

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on February 9, 2022 at 6:00 P.M., in the Second Floor Conference Room of the South Campus Building located at 40 11<sup>th</sup> Street West in Kalispell, MT. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration.

**3. Commission**

The Commissioners will hold a public hearing on the proposed zoning map amendment on February 22, 2022 at 9:00 A.M. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Office of the Board of Commissioners at 800 South Main Street in Kalispell.

**II. PROPERTY CHARACTERISTICS**

**A. Subject Property Location and Legal Description**

The subject property is located at 5333 Highway 93 South near Whitefish and totals approximately 29 acres (see Figure 1 below). The properties can be legally described as follows:

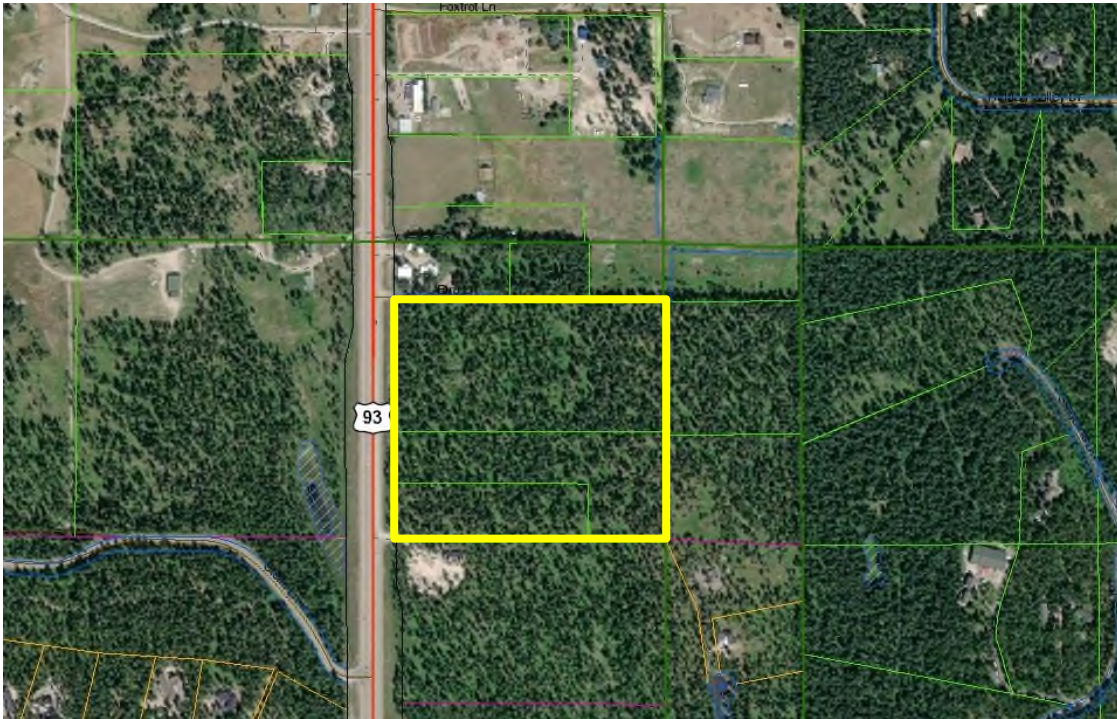
A tract of land, situated, lying and being in the Northeast Quarter of the Northeast Quarter of Section 24, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, and more particularly described as follows:

That portion of Parcel A and Parcel B of Certificate of Survey No. 1779 (records of Flathead County, Montana) lying in Section 24, Township 30 North, Range 22 West,

P.M.M., Flathead County, Montana; Subject to and together with all appurtenant easements of record.

EXCEPTING THEREFROM that portion granted to the State of Montana in Bargain and Sale Deed recorded May 14, 1992 as Document No. 92-135-08540, records of Flathead County, Montana.

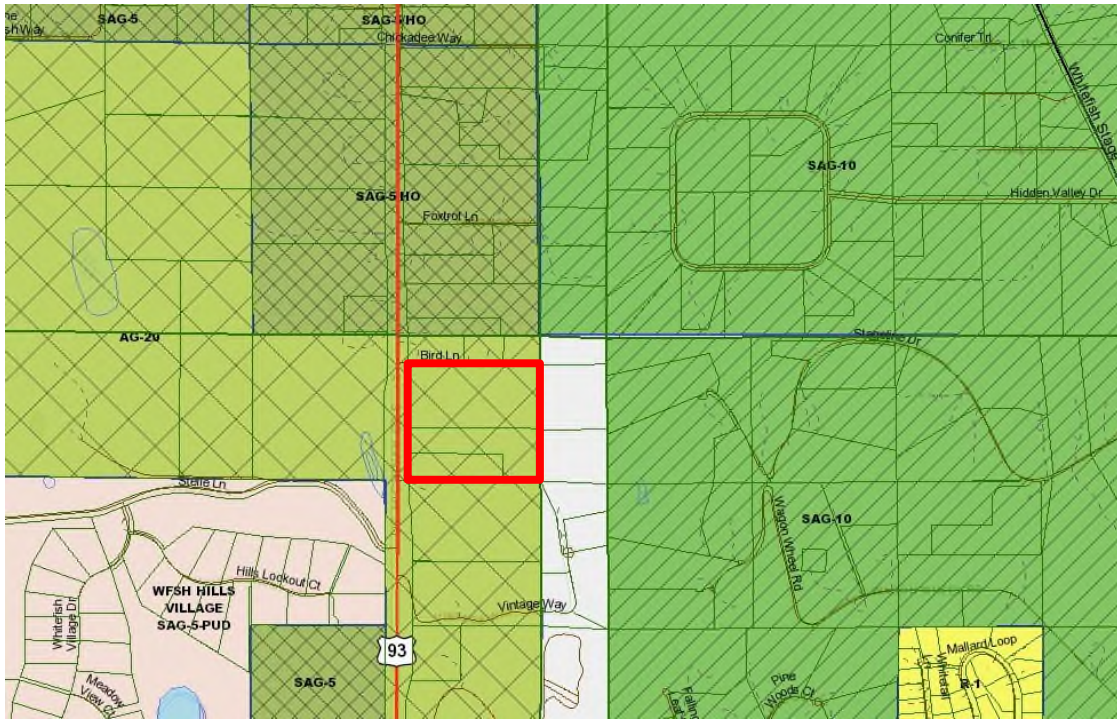
**Figure 1:** Subject property (outlined in yellow)



**B. General Character of and Reason for Amendment**

The subject property is located along Highway 93 approximately 1.5 miles south of the City of Whitefish. The property is currently undeveloped. The application states, “The applicant propose the SAG-5 zoning as they wish to develop a PUD and Subdivision similar in density and character to Whitefish Hills Village which sits immediately southwest of the proposed property, across Highway 93.”

**Figure 2:** Current zoning on the subject property (outlined in red)



**C. Adjacent Zoning and Character of the Overall Zoning District**

The property is located within the Blanchard Lake Zoning District, which is a 11,771-acre zoning district. The character of the zoning district in the immediate vicinity of the subject property is primarily rural residential and heavily forested. The adjacent properties to the north, south, and west are zoned AG-20. The properties to the southwest are zoned Whitefish Hills Village SAG-5 PUD. The adjacent properties to the east are not zoned. Nearby properties within several hundred feet of the subject property are zoned SAG-5 to the north and SAG-10 to the east.





- Flathead County Solid Waste District
  - Flathead County Superintendent of Schools
  - Flathead County Weeds & Parks Department
  - Montana Department of Transportation
  - Montana Fish, Wildlife & Parks
  - Whitefish Rural Fire District
  - Whitefish School District
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
- Bonneville Power Administration
    - Comment: “[...] At this time, BPA does not object to this request, as the property is located approximately 1.0 mile away from the nearest BPA transmission lines or structures.” Email received November 19, 2021
  - Flathead City-County Health Department – Environmental Health Services
    - Comment: “Environmental Health offers no comment regarding this proposed zone change.” Letter received November 22, 2021
  - Flathead County Solid Waste District
    - Comment: “[...] The District requests all solid waste generated at the proposed location be hauled by a private hauler. Republic Services is the licensed (PSC) Public Service Commission private hauler in this area. [...]” Letter received November 23, 2021
  - Flathead County Road & Bridge Department
    - Comment: “[...] At this point the County Road Department does not have any comments on this request.” Letter received November 23, 2021
  - The City of Whitefish Fire Department
    - Comment: “[...] This location while not in the City of Whitefish is in our primary response area.

At this time we have no problems or concerns with this request.” Letter received November 30, 2021
  - Montana Department of Transportation
    - Comment: “MDT is concerned with the impact new development will have on the highway system. The number of approaches and the additional vehicular trips the development will generate are the specific concerns.
    - Approaches to the highway system should be kept to a minimum to help facilitate safe traffic flow along US 93 by reducing conflict points.
    - As property continues to develop, there should be planning to reduce the number of existing approaches by providing for a roadway network both east and west of US 93 to facilitate traffic movements.

If there’s going to be change in use, an approach permit will have to be submitted.” Email received December 3, 2021

## **B. Public Comments**

1. Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on January 19, 2022. Legal notice of the Planning Board public hearing on this application was published in the January 23, 2022 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment was physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.] on January 6, 2022. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, no written public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing and/or the Commissioner's public hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

## **IV. EVALUATION OF PROPOSED AMENDMENT**

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

### **A. Build-Out Analysis**

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

The AG-20 designation is defined in Section 3.06 FCZR as, '*A district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.*'

The SAG-5 designation is defined in Section 3.08 FCZR as, '*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential*

*conflict of uses will be minimized, and to provide areas of estate-type residential development.'*

The permitted uses and conditional uses for the AG-20 and the SAG-5 zoning contain several differences. The amendment would reduce the number of permitted uses from 21 to 16 and increase the number of conditional uses from 22 to 28.

The permitted and conditional uses listed within AG-20 but not in SAG-5 are as follows:

- Dairy products processing, bottling, and distribution
- Fish Hatchery
- Ranch employee housing
- Animal farm
- Communication tower/mast
- Feed and seed processing and cleaning
- Feed lot: cattle, swine, poultry
- Radio and television broadcast tower

The permitted uses listed within the AG-20 but are listed as conditional uses in in SAG-5 are:

- Cellular communications tower
- Kennel
- Riding academy, rodeo arena
- Stable, public

The conditional uses listed within the SAG-5 but not in AG-20 are as follows:

- Golf course
- Golf driving range
- Manufactured home park
- Recreational vehicle park

The bulk and dimensional requirements within the current and proposed zoning require a 20-foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for detached accessory structures. A 20-foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20-foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For AG-20 the permitted lot coverage is 20% and maximum height is 35 feet (agricultural buildings exempt) and for SAG-5 the permitted lot coverage is 25% and maximum height of 35 feet.

The existing zoning requires a minimum lot area of 20 acres. The subject property totals 29 acres, thus no additional lots could be created under the existing zoning. The proposed zoning requires a minimum lot area of 5 acres which would potentially allow for four additional lots to be created. The requested zone change has the potential to increase density through subsequent subdivision in the future. The bulk and dimensional requirements are similar but the amendment would reduce the number of permitted uses while increasing the number of conditional uses.

**B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)**

**1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R). The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as ‘Agricultural.’ The proposed SAG-5 zoning classification would appear to contrast with the current designation. However, Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, “This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map.”

Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved, the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on goals and policies of the Growth Policy.

Part 4 of Chapter 2 the Growth Policy states, *‘It is clear that agriculture plays a vital role in both the economy and culture of Flathead County. The custom and culture of agriculture in Flathead County is one of the features that is contributing to rapid growth and development. Lands that have traditionally been used for agriculture are being converted increasingly to residential uses as residents seek rural living.’*

Part 7 of Chapter 2 the Growth Policy states, *‘The change in land uses from agriculture and timberlands to residential and the accompanying impacts of that change, create some of the greatest growth challenges to the county.’*

Currently, many of the properties in the surrounding area are used for rural residential or remain forested and undeveloped. The proposed zoning would continue to allow for agricultural and silvicultural uses.

The introduction to Part 7 of Chapter 2 states, *‘The density of residential developments is an issue raised throughout the public involvement process [...] Residential development, including the subdivision of land, is not inherently problematic. However, residential development at a density that is not compatible with existing local services and neighborhood character is likely to be contentious.’* It goes on to say that, *‘Capacity is based on the size and quality of the road, and once the capacity is exceeded, public safety suffers. Low density residential land uses on low capacity roads*



*are a match, but medium or high density land uses on low capacity roads create problems.'*

The proposed zoning would allow for both agriculture and silviculture uses on the property. The SAG-5 zone is a suburban agricultural zone with a 5-acre minimum lot size. The SAG-5 zone does not require public water and sewer and the lots would generally be large enough to accommodate a septic system with a drainfield while providing sufficient separation distances for a well. The proposed change would allow for four additional lots and increase traffic by 40 average daily trips, which, as discussed below, could be accommodated by the existing road system serving the property.

The following is a consideration of goals and policies which appear to be applicable to the proposed zone change:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
  - The amendment would allow the owner to subdivide but would also allow for the continuation of the existing use on the property.
- ❖ **G.3** – *Preserve the cultural integrity of private and public agriculture and timber lands in Flathead County by protecting the right to active use and management and allowing a flexibility of private land use that is economically and environmentally viable to both the landowner and Flathead County.*
  - **P.3.3** – *Maintain flexibility of land use options to forest and agriculture land owners by focusing on mitigating the negative impacts of development.*
    - The proposed SAG-5 zoning would continue to allow for agricultural and silvicultural uses, similar to the existing zone.
- ❖ **G.4** – *Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.*
  - **P.4.3** – *Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.)*
  - **P.4.5** – *Develop equitable and predictable impact-mitigation for converting agricultural lands to residential uses.*
    - The proposed zoning would allow for agricultural use on the subject property while providing additional flexibility to the landowner to subdivide the property and sell off smaller lots.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
  - The SAG-5 designation would allow for densities of about one dwelling unit per five acres for single family. One dwelling unit per five acres would likely not require public water and sewer. Further discussion on public utilities is contained later in this report.

- **P.8.2** – *Identify required criteria for various densities that support the seven elements of the public’s vision outlined in Chapter 1.*

The Seven Elements of the Public’s Vision include:

- *Protect the Views*

The vision states, *‘One characteristic that residents of Flathead County cherish is the view. Views of mountains, lakes, forests, wildlife, and open spaces are cited as characteristics residents of Flathead County would not change. “Scenic resources” are valued throughout the county regardless of age, gender or location.’* The proposed zone change, if approved, would likely have minimal impact on views because it would allow for four additional lots.

- *Promote a Diverse Economy*

The vision states, *‘The cost of living and home ownership should be affordable to the median income.’* The proposed zone change, if approved, could allow for additional single-family residential and Accessory Dwelling Units (ADUs), which has the potential to make homeownership more affordable by adding to the housing supply and to increase affordable rental units in the County.

- *Manage Transportation*

Vision 3 discusses managing traffic flow through land development patterns; this report contains discussion regarding the proposals impacts on traffic below.

- *Maintain the Identity of Rural Communities*

The vision states, *‘Preventing communities from growing together and losing their unique identities was another concern of many scoping meeting participants. The concern of seeing Flathead County turn into one continuous sprawling development was expressed in a variety of ways. Many residents of Flathead County do not want to see strip malls, used car lots, mini storage, warehouse stores, lumber yards, and other visually dominating land uses disrupt the perception of driving between unique rural communities.’* The proposed SAG-5 zoning is a rural zoning district that would allow for rural residential development.

- *Protect Access to and Interaction with Parks and Recreation*

This report contains a discussion on parks and recreation below.

- *Properly Manage and Protect the Natural and Human Environment*

The vision states, *‘Air and water quality were mentioned frequently as well as co-habitation of people and wildlife being qualities that make Flathead County unique and desirable. Many residents expressed a desire to protect the lakes, rivers, ponds, groundwater and air for future generations.’* The subject property does not contain any surface waters or groundwater which would be impacted by this proposal. The increased residential density is likely to have a minimum impact on air quality.

- *Preserve the Rights of Private Property Owners.*

As previously stated, the amendment would allow the owner to subdivide the property but would also allow for the continuation of agricultural on the property.

- ❖ **G.15** – *Promote a diverse demographic of residents.*
  - **P.15.1** – *Encourage housing, employment, education and recreation to attract, support and maintain young families.*
    - The SAG-5 zone would allow for single family dwelling, manufactured homes and would also allow for accessory dwelling units as a permitted use, all of which has the potential to make housing more affordable for young families.
- ❖ **G.23** – *Maintain safe and efficient traffic flow and mobility on county roadways.*
  - **P.23.2** – *Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
    - Primary access to the property is currently via Highway 93, which is a State-maintained highway. Further discussion regarding access and transportation is contained below in this report.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
  - This report contains discussion on the proposal’s potential burden on schools below.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
  - This report contains discussion on the adequacy of emergency service below.

**Finding #1:** The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the SAG-5 zoning would continue to allow for agricultural and silvicultural uses, the SAG-5 zone would allow for single-family dwellings, manufactured homes, and ADUs at a higher density which has the potential to create affordable housing options, and the proposed zoning is rural in nature.

## **2. Whether the proposed map amendment is designed to:**

### **a. Secure safety from fire and other dangers;**

The subject property is located within the Whitefish Rural Fire District and the Whitefish Volunteer Fire Department is located approximately 2.7 driving miles southeast of the property, along Hodgson Road. Additionally, the Whitefish Fire Department is located approximately 3.2 driving miles north of the property within the City of Whitefish and would respond in the event of a fire or medical emergency. The property is located within the Wildland Urban Interface (WUI) and a ‘High’ County-wide priority area. Primary access to the properties is via Highway 93, which is a paved, State-maintained highway capable of providing access for emergency vehicles. Comment received from the City of Whitefish Fire Department states, “This location while not in the City of Whitefish is in our

primary response area. At this time we have no problems or concerns with this request.”

According to FEMA FIRM Panel 30029C1405J, the property is located within an unshaded Zone X, an area determined to be outside the 0.2% annual chance flood hazard.

**Finding #2:** The proposed zoning map amendment would secure safety from fire and other dangers because although the property is within the WUI and a high County-wide priority area, the property is served by the Whitefish Rural Fire District and is located approximately 2.7 miles from the nearest fire station, access is from a paved, State-maintained highway, and the property is not located within a Special Flood Hazard Area.

**b. Promote public health, public safety, and general welfare;**

As previously stated, the subject properties are located within the Whitefish Rural Fire District and the nearest fire station is approximately 2.7 driving miles from the property. The Whitefish Volunteer Fire Department and the City of Whitefish Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff’s Office provides police services to the subject property. Highway 93 appears adequate to provide ingress and egress for emergency vehicles which would help to ensure adequate public health and safety.

The SAG-5 zoning classification would allow for similar uses to what already exists in the area and what is allowed within the adjacent SAG-5 and AG-20 zoning, therefore, the zone change is not anticipated to adversely impact public health, safety, or welfare.

**Finding #3:** The proposed zoning map amendment would have a minimal impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire District and Flathead County Sheriff’s Office, and future development would comply with the permitted and conditional uses in the SAG-5 zone which are similar to the existing surrounding uses.

**c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

Primary access to the subject property is via Highway 93, which is a paved, five-lane, State-maintained highway within right-of-way of varying widths. The most recent traffic counts for Highway 93 in the vicinity of the properties were collected in 2020 and indicated 16,112 average daily trips (ADT). Using standard trip generation, single-family residential uses typically generate 10 average daily vehicle trips per dwelling. The proposed zoning could allow for four additional lots, which would generate approximately 40 ADT. The zoning map amendment has the potential to increase traffic by less than 1% on Highway 93. Comment received from the Montana Department of Transportation states, “MDT is concerned with the impact new development will have on the highway system. The number of approaches and the additional vehicular trips the development will generate are the specific concerns.” The comment indicates an approved approach permit would be required for new access or change in use of an existing access. Future subdivision

of the property would require further review and traffic concerns could be further addressed at that time.

The application indicates lots created through future subdivision would be served by individual septic systems and a public water supply system. The Flathead City-County Health Department had no comment regarding the proposal. The property owners would be required to undergo review and approval from the Flathead City-County Health Department and the Montana Department of Environmental Quality, as applicable, if the properties are further subdivided or developed.

According to the 2019 Census Data, there are 49,531 housing units in the Flathead County. The Flathead County Statistical Report of Schools 2021 states there are 17,331 students enrolled in County schools. The total students (17,331) divided by the total households (49,531) equals approximately 0.35 students per household. The proposal has the potential to create four more lots in the future and therefore would generate approximately one school age child. The Whitefish School District did not provide comment on this proposal. It is anticipated that the schools would have capacity should any residential growth occur as a result of the proposed zoning map amendment.

The proposed amendment from AG-20 to SAG-5 would reduce the minimum lot size from 20 acres to 5 acres. It is anticipated subsequent future development would require subdivision review and parkland dedication requirements would be determined at that time. There are numerous parks, natural areas, and recreational opportunities accessible in the vicinity of the proposal.

**Finding #4:** The proposed zoning map amendment would facilitate the adequate provision of transportation because access to the subject property currently exists via Highway 93 which is a paved, five-lane, State-maintained highway, the proposal has the potential to increase traffic on Highway 93 by less than 1%, and future development would require an approach permit from the Montana Department of Transportation.

**Finding #5:** The proposed zoning map amendment would facilitate the adequate provision of water and sewer services, schools, and parks because future development of the property would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, as applicable, the proposal has the potential to generate one school age child, no comment was received from the local school district, and parkland dedication would be considered during subdivision review.

**3. In evaluating the proposed map amendment, consideration shall be given to:**

**a. The reasonable provision of adequate light and air;**

While the proposed zoning map amendment has the potential to increase development density on the subject properties, all additional lots created or structures built would be required to meet the bulk and dimensional requirements of the SAG-5 zoning designation. The bulk and dimensional requirements have been established to provide for a reasonable provision of light and air.



The minimum lot area for the proposed SAG-5 zoning designation is 5 acres and the minimum lot area for the existing AG-20 zone is 20 acres, although both zones allow for clustering provisions as outlined in Section 5.09 FCZR. The density allowed within the proposed zoning would be greater than the density allowed within the current zoning designation. The maximum building height within the current zoning and the proposed zoning is 35 feet. The permitted lot coverage is 20% for the current zoning and would be 25% for residential structures under the proposed zoning.

The setback requirements for the proposed zoning designation are identical to those of the current zoning designation. The required setback is 20 feet from all property lines for the principal structure, 20 feet from the front and side-corner property lines for detached accessory structures, and 5 feet from the rear and side property lines for detached accessory structures. A 20-foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries.

**Finding #6:** The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements of the SAG-5 zoning designation.

**b. The effect on motorized and non-motorized transportation systems;**

As previously stated, primary access to the subject property is via Highway 93, which is a paved, five-lane, State-maintained highway within right-of-way of varying widths. The most recent traffic counts for Highway 93 in the vicinity of the properties were collected in 2020 and indicated 16,112 average daily trips (ADT). Using standard trip generation, single-family residential uses typically generate 10 average daily vehicle trips per dwelling. The proposed zoning could allow for four additional lots, which would generate approximately 40 ADT. The zoning map amendment has the potential to increase traffic by less than 1% on Highway 93. Comment received from the Montana Department of Transportation states, “MDT is concerned with the impact new development will have on the highway system. The number of approaches and the additional vehicular trips the development will generate are the specific concerns.” The comment indicates an approved approach permit would be required for new access or change in use of an existing access. Future subdivision of the property would require further review and traffic concerns could be further addressed at that time.

The Flathead County Trails Plan identifies Highway 93 as a proposed connector trail. It is anticipated there would be minimal impact on non-motorized traffic because future development through subdivision of the properties would require an easement for a bicycle and pedestrian trail along Highway 93.

**Finding #7:** The proposed zoning map amendment would have a minimal impact on motorized and non-motorized transportation systems because access to the subject property currently exists via Highway 93 which is a paved, five-lane, State-maintained highway, the proposal has the potential to increase traffic on Highway 93 by less than 1%, future development would require approach permits from the Montana Department of Transportation, and future subdivision of the property would require an easement for a bicycle and pedestrian trail along Highway 93.

- c. **Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

Whitefish is the nearest municipality to the subject property and the city limits are located approximately 1.5 miles to the north. The property is located outside the boundary of the Whitefish Growth Policy.

**Finding #8:** The proposed zoning map amendment would not have an impact on the urban growth in the vicinity of cities because the closest incorporated city is located approximately 1.5 miles north of the subject property.

- d. **The character of the district(s) and its peculiar suitability for particular uses;**

The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

- i. ***The zoning allows a use that differs significantly from the prevailing use in the area.***

The character of the zoning district in the immediate vicinity of the subject property is primarily rural residential. The adjacent properties to the north, south, and west are zoned AG-20. The properties to the southwest are zoned Whitefish Hills Village SAG-5 PUD. The adjacent properties to the east are not zoned, and the properties farther to the east are zoned SAG-10. There is additional SAG-5 zoning approximately 0.05 miles to the north of the subject property.

The proposed zoning map amendment, if approved, would allow for uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing agricultural zoning and existing on surrounding properties.

- ii. ***The zoning applies to a small area or benefits a small number of separate landowners.***

The zoning map amendment would apply to three tracts of land which are owned by one landowner. Using standard ArcGIS software staff was able to determine the subject property is located adjacent to a SAG-5 zoned area encompassing approximately 937 acres. The proposed zone change would add 29 acres of SAG-5 zoning to the adjacent SAG-5 zoning use district.

- iii. ***The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.***

Although the proposal only includes one landowner, it would not result in special legislation at the expense of the surrounding landowners or general public because the permitted and conditional uses listed within the proposed

SAG-5 zone are similar to the permitted and conditional uses in the current AG-20, as discussed in the build-out analysis section of this report.

**Finding #9:** The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zoning does not allow uses that differ significantly from the prevailing use in the area, and the proposal would add 29 acres of SAG-5 zoning to an existing SAG-5 zone.

**e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The adjacent properties primarily contain rural residential uses. Previous sections of this report have discussed the differences between permitted and conditional uses in the existing AG-20 zoning and the proposed SAG-5 zoning designation. Conserving the value of buildings throughout the jurisdictional area is a function of allowing land uses that are appropriate and reasonable. Many of the land uses listed as permitted uses in the proposed SAG-5 zone exist in the vicinity of the subject property such as single-family residential and agricultural uses. The permitted and conditional uses would likely not impact the value of buildings and would be appropriate land uses throughout the area of the proposed zone change because they already exist in the area.

**Finding #10:** The proposed zoning map amendment would conserve the value of buildings and encourage the most appropriate use of land in this particular location because the proposed zoning designation allows for similar uses to the surrounding agricultural and suburban agricultural zoning.

**4. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

Whitefish is the nearest municipality to the subject property and the city limits are located approximately 1.5 miles to the north. The property is located outside the boundary of the Whitefish Growth Policy. Since there are no nearby municipalities, the proposal will have no impact on compatibility of zoning ordinances of nearby municipalities.

**Finding #11:** The proposed zoning map amendment would not have an impact on the compatibility of zoning ordinances of nearby municipalities because the closest incorporated city is located approximately 1.5 miles north of the subject property.

## **V. SUMMARY OF FINDINGS**

1. The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the SAG-5 zoning would continue to allow for agricultural and silvicultural uses, the SAG-5 zone would allow for single-family dwellings, manufactured homes, and ADUs at a higher density which has the potential to create affordable housing options, and the proposed zoning is rural in nature.
2. The proposed zoning map amendment would secure safety from fire and other dangers because although the property is within the WUI and a high County-wide priority area, the property is served by the Whitefish Rural Fire District and is located approximately 2.7

miles from the nearest fire station, access is from a paved, State-maintained highway, and the property is not located within a Special Flood Hazard Area.

3. The proposed zoning map amendment would have a minimal impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire District and Flathead County Sheriff's Office, and future development would comply with the permitted and conditional uses in the SAG-5 zone which are similar to the existing surrounding uses.
4. The proposed zoning map amendment would facilitate the adequate provision of transportation because access to the subject property currently exists via Highway 93 which is a paved, five-lane, State-maintained highway, the proposal has the potential to increase traffic on Highway 93 by less than 1%, and future development would require an approach permit from the Montana Department of Transportation.
5. The proposed zoning map amendment would facilitate the adequate provision of water and sewer services, schools, and parks because future development of the property would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality, as applicable, the proposal has the potential to generate one school age child, no comment was received from the local school district, and parkland dedication would be considered during subdivision review.
6. The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements of the SAG-5 zoning designation.
7. The proposed zoning map amendment would have a minimal impact on motorized and non-motorized transportation systems because access to the subject property currently exists via Highway 93 which is a paved, five-lane, State-maintained highway, the proposal has the potential to increase traffic on Highway 93 by less than 1%, future development would require approach permits from the Montana Department of Transportation, and future subdivision of the property would require an easement for a bicycle and pedestrian trail along Highway 93.
8. The proposed zoning map amendment would not have an impact on the urban growth in the vicinity of cities because the closest incorporated city is located approximately 1.5 miles north of the subject property.
9. The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zoning does not allow uses that differ significantly from the prevailing use in the area, and the proposal would add 29 acres of SAG-5 zoning to an existing SAG-5 zone.
10. The proposed zoning map amendment would conserve the value of buildings and encourage the most appropriate use of land in this particular location because the proposed zoning designation allows for similar uses to the surrounding agricultural and suburban agricultural zoning.
11. The proposed zoning map amendment would not have an impact on the compatibility of zoning ordinances of nearby municipalities because the closest incorporated city is located approximately 1.5 miles north of the subject property.

## **VI. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal generally complies with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 FCZR does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: EA